

# SENATE BILL 539

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By: **Senators Kelley and Montgomery**  
Introduced and read first time: February 3, 2012  
Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Medical Assistance Program – Long–Term Care Services –**  
3 **Eligibility**

4 FOR the purpose of requiring the Department of Health and Mental Hygiene to  
5 provide an applicant for certain Maryland Medical Assistance Program services  
6 with a written notice of eligibility within a certain time period after the  
7 Department receives a certain application; providing that an applicant is  
8 presumptively eligible for certain Program benefits if the Department does not  
9 make an eligibility determination within a certain time period; establishing the  
10 day on which an individual who is determined to be presumptively eligible shall  
11 receive certain Program benefits; requiring the Department to make a final  
12 decision regarding the eligibility of certain individuals for the Program within a  
13 certain time period; requiring the Department to provide certain notice to  
14 certain individuals before terminating Program benefits under certain  
15 circumstances; authorizing certain individuals to appeal a decision by the  
16 Department to terminate Program benefits within a certain time period;  
17 requiring the Department to continue to provide Program benefits under certain  
18 circumstances; establishing the circumstances under which the Department is  
19 required to make a determination of presumptive eligibility on subsequent  
20 applications from certain individuals; providing that the Department is not  
21 required to authorize presumptive eligibility under this Act if the Department  
22 has not received certain information or a certain application; requiring the  
23 Department and the Department of Human Resources to submit certain budget  
24 estimates in a certain manner; providing that a certain budget estimate shall be  
25 considered a certain estimate prescribed by law; requiring the Department and  
26 the Department of Human Resources to report certain information to the  
27 General Assembly on or before the first day of each month; defining certain  
28 terms; and generally relating to eligibility for long–term care services and the  
29 Maryland Medical Assistance Program.

30 BY adding to

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Health – General  
2 Section 15–147  
3 Annotated Code of Maryland  
4 (2009 Replacement Volume and 2011 Supplement)

5 Preamble

6 WHEREAS, Despite State regulations that require applications for benefits  
7 through the Maryland Medical Assistance Program to be processed within 30 days or  
8 60 days if a disability determination is necessary, the applications are not being  
9 processed by the State within the required time frames; and

10 WHEREAS, Despite federal regulations that require applications for long–term  
11 care services through Medicaid to be processed within 45 days, the applications are  
12 not being processed by the State within the required time frame; and

13 WHEREAS, Chapters 613 and 614 of the Acts of the General Assembly of 2008  
14 required the Department of Health and Mental Hygiene and the Department of  
15 Human Resources to create uniform procedures, guidelines, and forms to be used by  
16 all employees in the determination of Maryland Medical Assistance Program eligibility  
17 for long–term care services; and

18 WHEREAS, Marylanders in need of long–term care services through the  
19 Maryland Medical Assistance Program are not having their applications for benefits  
20 processed in accordance with the timelines prescribed in federal law and State  
21 regulations; and

22 WHEREAS, Marylanders in need of long–term care services through the  
23 Maryland Medical Assistance Program are facing involuntary discharge from nursing  
24 homes for nonpayment as a result of their applications not being processed by the  
25 State in a timely manner; and

26 WHEREAS, Many nursing facilities participating in the Maryland Medical  
27 Assistance Program do not receive timely payment for the critically essential medical  
28 services they provide; and

29 WHEREAS, Marylanders are facing undue delays in obtaining access to  
30 Medicaid home– and community–based services waivers under § 15–137 of the Health  
31 – General Article and are unable to exercise their right to a timely transition from a  
32 nursing home as a result of their eligibility applications not being processed in a  
33 timely manner; and

34 WHEREAS, The right to a hearing before an administrative law judge under  
35 the Administrative Procedure Act for failing to act promptly on an eligibility  
36 application is not resulting in expedited eligibility determinations, but instead is  
37 adding months of further delay; now, therefore,

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Health – General**

4 **15–147.**

5 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE  
6 MEANINGS INDICATED.

7 (2) “APPLICANT” MEANS AN INDIVIDUAL APPLYING TO RECEIVE  
8 BENEFITS AND SERVICES THROUGH THE PROGRAM.

9 (3) “HOME– AND COMMUNITY–BASED WAIVER SERVICES”  
10 INCLUDES SERVICES PROVIDED UNDER THE LIVING AT HOME WAIVER, THE  
11 OLDER ADULTS WAIVER, THE MEDICAL DAY CARE WAIVER, OR ANY OTHER  
12 HOME– AND COMMUNITY–BASED WAIVER PROGRAM ADMINISTERED BY THE  
13 DEPARTMENT.

14 (4) “LONG–TERM CARE SERVICES” INCLUDE NURSING FACILITY  
15 SERVICES, HOME– AND COMMUNITY–BASED WAIVER SERVICES, AND OTHER  
16 SERVICES THAT REQUIRE A NURSING FACILITY LEVEL OF CARE.

17 (B) (1) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH  
18 AND EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE DEPARTMENT  
19 SHALL PROVIDE AN APPLICANT FOR LONG–TERM CARE SERVICES OR  
20 HOME– AND COMMUNITY–BASED WAIVER SERVICES WITH A WRITTEN NOTICE OF  
21 ELIGIBILITY NO LATER THAN 60 DAYS AFTER THE DEPARTMENT RECEIVES A  
22 COMPLETE APPLICATION.

23 (II) AN APPLICATION RECEIVED BY THE DEPARTMENT  
24 UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE CONSIDERED  
25 COMPLETE IF:

26 1. THE DEPARTMENT HAS NOT MADE A WRITTEN  
27 REQUEST FOR ADDITIONAL DOCUMENTATION FROM THE APPLICANT WITHIN 10  
28 DAYS AFTER RECEIVING THE APPLICATION; OR

29 2. ANY ADDITIONAL DOCUMENTATION REQUESTED  
30 BY THE DEPARTMENT FROM AN APPLICANT WITHIN 10 DAYS AFTER RECEIVING  
31 THE APPLICATION HAS BEEN RECEIVED BY THE DEPARTMENT.

32 (2) IF THE DEPARTMENT DOES NOT MAKE AN ELIGIBILITY  
33 DETERMINATION WITHIN 60 DAYS AFTER RECEIVING A COMPLETE APPLICATION

1 FOR LONG-TERM CARE SERVICES OR HOME- AND COMMUNITY-BASED WAIVER  
2 SERVICES, THE APPLICANT SHALL BE PRESUMPTIVELY ELIGIBLE FOR THE  
3 PROGRAM.

4 (3) (I) IF AN INDIVIDUAL IS DETERMINED TO BE  
5 PRESUMPTIVELY ELIGIBLE FOR THE PROGRAM UNDER PARAGRAPH (2) OF THIS  
6 SUBSECTION, THE INDIVIDUAL SHALL RECEIVE FULL PROGRAM BENEFITS,  
7 INCLUDING PRE-EXISTING MEDICAL EXPENSE ELIGIBILITY, EFFECTIVE ON THE  
8 FIRST DAY OF THE MONTH IN WHICH THE INDIVIDUAL'S APPLICATION WAS  
9 FILED.

10 (II) IF THE PRESUMPTIVELY ELIGIBLE INDIVIDUAL  
11 REQUESTS RETROACTIVE PROGRAM BENEFITS FOR UP TO 3 MONTHS PRIOR TO  
12 THE MONTH IN WHICH THE APPLICATION FOR BENEFITS WAS FILED, THE  
13 INDIVIDUAL'S PRESUMPTIVE ELIGIBILITY SHALL BE EFFECTIVE ON THE FIRST  
14 DAY OF THE MONTH OF THE EARLIEST RETROACTIVE MONTH REQUESTED.

15 (C) (1) THE DEPARTMENT SHALL MAKE A FINAL DECISION  
16 REGARDING AN INDIVIDUAL'S ELIGIBILITY FOR THE PROGRAM WITHIN 6  
17 MONTHS AFTER A DETERMINATION OF PRESUMPTIVE ELIGIBILITY.

18 (2) IF THE FINAL DECISION OF THE DEPARTMENT IS THAT AN  
19 INDIVIDUAL IS NOT ELIGIBLE FOR THE PROGRAM, THE DEPARTMENT SHALL  
20 PROVIDE TIMELY AND ADEQUATE WRITTEN NOTICE TO THE PRESUMPTIVELY  
21 ELIGIBLE INDIVIDUAL BEFORE TERMINATING PROGRAM BENEFITS.

22 (3) (I) WITHIN 90 DAYS AFTER RECEIVING THE NOTICE  
23 REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE PRESUMPTIVELY  
24 ELIGIBLE INDIVIDUAL MAY APPEAL THE DECISION TO TERMINATE PROGRAM  
25 BENEFITS.

26 (II) IF AN INDIVIDUAL APPEALS A DECISION WITHIN 10  
27 DAYS AFTER RECEIVING THE NOTICE REQUIRED UNDER PARAGRAPH (2) OF  
28 THIS SUBSECTION, THE DEPARTMENT SHALL CONTINUE TO PROVIDE PROGRAM  
29 BENEFITS PENDING THE HEARING ON THE APPEAL, IN ACCORDANCE WITH  
30 STATE AND FEDERAL LAW.

31 (D) IF AN APPLICANT FOR LONG-TERM CARE SERVICES OR HOME- AND  
32 COMMUNITY-BASED WAIVER SERVICES HAS BEEN DENIED ELIGIBILITY FOR  
33 SERVICES IN A PRIOR APPLICATION BASED ON MEDICAL FACTORS, A  
34 DETERMINATION OF PRESUMPTIVE ELIGIBILITY IN ANY SUBSEQUENT  
35 APPLICATION FOR LONG-TERM CARE SERVICES OR HOME- AND  
36 COMMUNITY-BASED WAIVER SERVICES FROM THE APPLICANT SHALL BE MADE

1 ONLY IF THERE IS SUFFICIENT EVIDENCE OF A WORSENING OF THE  
2 INDIVIDUAL'S PHYSICAL OR MENTAL CONDITION, OR THE EXISTENCE OF A NEW  
3 IMPAIRMENT, THAT DEMONSTRATES A NEED FOR ALLOWING A SUBSEQUENT  
4 DECISION REGARDING PRESUMPTIVE ELIGIBILITY.

5 (E) THE DEPARTMENT IS NOT REQUIRED TO AUTHORIZE PRESUMPTIVE  
6 ELIGIBILITY UNDER THIS SECTION IF THE DEPARTMENT HAS NOT RECEIVED:

7 (1) THE INFORMATION NECESSARY TO ASSESS THE INDIVIDUAL'S  
8 MEDICAL ELIGIBILITY FOR THE PROGRAM; AND

9 (2) A COMPLETE APPLICATION FROM THE INDIVIDUAL.

10 (F) (1) THE DEPARTMENT AND THE DEPARTMENT OF HUMAN  
11 RESOURCES SHALL SUBMIT BUDGET ESTIMATES TO THE GOVERNOR THAT  
12 ENABLE THE DEPARTMENT AND THE DEPARTMENT OF HUMAN RESOURCES TO  
13 ACHIEVE TIMELY AND ACCURATE ELIGIBILITY DETERMINATIONS WITHIN THE  
14 TIMELINES ESTABLISHED UNDER THE CODE OF MARYLAND REGULATIONS AND  
15 FEDERAL LAW.

16 (2) A BUDGET ESTIMATE REQUIRED UNDER THIS SUBSECTION  
17 SHALL BE CONSIDERED AN ESTIMATE PRESCRIBED BY LAW UNDER ARTICLE III,  
18 § 52(12) OF THE MARYLAND CONSTITUTION.

19 (G) ON OR BEFORE THE FIRST DAY OF EACH MONTH, THE DEPARTMENT  
20 AND THE DEPARTMENT OF HUMAN RESOURCES SHALL REPORT TO THE  
21 GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1246 OF THE STATE  
22 GOVERNMENT ARTICLE, ON:

23 (1) THE NUMBER OF APPLICATIONS PENDING FOR THE PROGRAM  
24 AND THE LENGTH OF TIME EACH APPLICATION HAS BEEN PENDING;

25 (2) THE NUMBER OF APPLICATIONS THAT WERE APPROVED IN  
26 THE PREVIOUS MONTH;

27 (3) THE NUMBER OF APPLICATIONS THAT WERE DENIED IN THE  
28 PREVIOUS MONTH AND THE REASONS FOR THE DENIALS;

29 (4) THE NUMBER OF PROGRAM RECIPIENTS WHO PREVIOUSLY  
30 APPLIED FOR A REDETERMINATION AND WHOSE BENEFITS WERE TERMINATED  
31 IN THE PREVIOUS MONTH AND THE REASONS FOR THE TERMINATIONS;

1           **(5) THE NUMBER OF APPLICATIONS THAT WERE DENIED FOR**  
2 **FAILURE TO PROVIDE INFORMATION WHERE NO WRITTEN REQUEST FOR**  
3 **INFORMATION HAD BEEN MADE BY THE DEPARTMENT;**

4           **(6) THE NUMBER OF APPLICANTS WHO WERE DETERMINED TO BE**  
5 **PRESUMPTIVELY ELIGIBLE FOR THE PROGRAM IN THE PREVIOUS MONTH; AND**

6           **(7) THE MEASURES TAKEN BY THE DEPARTMENT AND THE**  
7 **DEPARTMENT OF HUMAN RESOURCES TO:**

8                   **(I) STREAMLINE THE APPLICATION PROCESS FOR**  
9 **LONG-TERM CARE SERVICES THROUGH THE PROGRAM; AND**

10                   **(II) ELIMINATE DELAYS IN PROCESSING APPLICATIONS FOR**  
11 **LONG-TERM CARE SERVICES THROUGH THE PROGRAM.**

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 July 1, 2012.